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Decision

Matter of: MVM, Inc.

File: B-290726; B-290726.2; B-290727; B-290727.2

Date: September 23, 2002

James S. Phillips, Esq., Centre Law Group, LLC, for the protester.
Donald E. Barnhill, Esq., Barnhill & Assocs., for BNCI/AKAL, the intervenor.
Elizabeth Gaffin, Esq., Department of Justice, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Experience of joint venture partners can be considered in evaluating the experience of the joint venture.
2. Protests that the agency misevaluated the competing offerors' technical proposals are denied where the record shows that the evaluations were reasonable; the protester's disagreement with the evaluations is not a legal basis to overturn the evaluations.
3. Price evaluation under solicitation for a fixed-price contract is unobjectionable where the agency's analysis consisted of considering the level of competition and a comparison of the prices of the competitive range offerors.

DECISION

MVM, Inc. protests the awards of two contracts to BNCI/AKAL, a joint venture, under request for proposals (RFP) Nos. ACL-0-R-0004 and ACL-0-R-0005, issued by the Immigration and Naturalization Service (INS), Department of Justice, for unarmed guard services at INS's service processing centers. MVM challenges the technical and price evaluations.

We deny the protests.

The largely identical RFPs, issued April 4, 2001, were to obtain unarmed guard services for the INS's El Centro Service Processing Center, California (-0004) and Florence Service Processing Center, Arizona (-0005). The RFPs contemplated the award of fixed-price requirements contracts for a base year with four 1-year options.

The service processing centers house alien detainees who are in removal proceedings or may be subject to a final order of removal. The contractors were required to “furnish unarmed security guard services, including management personnel, supervision, manpower, relief guards, uniforms, equipment, and supplies to provide guard services seven (7) days a week, twenty-four (24) hours per day at the [processing centers].” RFPs at C-2.

The RFPs listed six technical evaluation factors: (1) experience/past performance, (2) personnel, (3) financial condition and capability, (4) quality control plan, (5) training, and (6) records and reports. The RFPs advised that the experience and past performance subfactors of the first factor were equal in importance to each other, and that each of these subfactors was equal in importance to the second factor, which in turn was equal to the combined weight of the remaining four factors. The third factor was said to be twice as important as the fourth and fifth factors, and the fourth and fifth factors were of equal importance and each twice as important as the sixth factor. The combined weight of the technical factors was said to be approximately equal in importance to price. RFPs at M-2-3.

With respect to the experience/past performance factor, the RFPs advised that “[t]he evaluation of Experience and Past Performance will be a subjective assessment based on the consideration of all relevant facts and circumstances.” Under the experience subfactor, the “Offerors['] guard experience that is similar in size, scope, and complexity will be evaluated to determine the capability to perform the work under this contract.” Past Performance was to be evaluated to determine, among other things, whether the offeror has consistently demonstrated a “reputation for providing high quality, timely, cost-effective services while conforming to contract requirements” and the “Offeror’s success in providing customer satisfaction.” The RFPs encouraged offerors “to provide past performance information from predecessor companies, subcontracts, key personnel who have relevant experience or other past performance information such as relevant state and local government contracts, and commercial contracts.” RFP at M-3-4.

With respect to the financial condition and capability factor, the RFPs advised:

The Government will assess the financial condition of the Offeror and its financial ability to acquire and provide the necessary resources to fulfill the requirements of the contract. The Government is seeking to determine if the Offeror has available financial resources for staff, personnel, equipment, and supplies to support the contract. . . . The offeror must show that it has: Sufficient funds available for all start up costs including a minimum of two months actual contract performance.

RFP at M-4-5.

The INS received 17 proposals, including MVM's and BNCI/AKAL's, in response to RFP -0004, and 15 proposals, including MVM's and BNCI/AKAL's, in response to RFP -0005. A Source Selection Evaluation Board (SSEB) composed of six members evaluated the proposals and assigned each proposal an adjectival rating for each evaluation factor.¹ The SSEB established a competitive range for both RFPs that included the proposals of MVM, BNCI/AKAL, and a third offeror.

The INS held discussions with each competitive range offeror tailored to the weaknesses/deficiencies in its proposal.² Discussions with MVM addressed its experience and financial capability, while discussions with BNCI/AKAL related to its experience, training, and the nature of its joint venture. Final proposal revisions were received on February 20, 2002. Based on the agency's evaluation of the final proposal revisions, MVM's and BNCI/AKAL's proposals received identical final technical ratings under each factor for both RFPs as follows:

Experience	Good
Past Performance	Outstanding
Personnel	
Key personnel	Good
Staffing	Good
Financial Condition	Outstanding
Quality Control Plan	Good
Training	Good
Records and Reports	Good

Agency Reports, Source Selection Decision Documents, at 10.

The INS then evaluated each offeror's prices for accuracy and compared the offerors' prices to one other. Under RFP -0004, BNCI/AKAL submitted the lowest price of \$49,057,619.52, while MVM had the next lowest price of \$51,816,040.64. Similarly, under RFP -0005, BNCI/AKAL submitted the lowest price of \$58,763,893.76, while MVM's was second low at \$61,119,918.08. In light of the equal technical ratings

¹ The SSEB evaluated proposals under each technical evaluation factor based upon an adjectival scale of outstanding, good, acceptable, and unacceptable, except past performance, which was evaluated based upon a scale of neutral, outstanding, good, satisfactory, marginal or unsatisfactory. Agency Reports, Source Selection Decision Documents, at 4-5.

² Contrary to the protester's unsupported contentions, there is no evidence that the agency conducted unequal or improper discussions.

and BNCI/AKAL's lower prices, the INS made awards under both RFPs to that joint venture on May 13. These protests followed.

MVM alleges that the agency improperly evaluated the technical proposals. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria, and procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

With respect to past performance, MVM objects to BNCI/AKAL's outstanding rating because the agency evaluated the newly-created joint venture's past performance on the basis of the experience of the individual joint venture partners, whereas under the evaluation scheme offerors with no past performance history were to receive a neutral rating.³ This contention is meritless. Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii) directs agencies to take into account past performance information regarding predecessor companies, key personnel, and major subcontractors when such information is relevant to an acquisition. Thus, the agency properly can consider the relevant experience and past performance history of the individual joint venture partners in evaluating the past performance of the joint venture, so long as doing so is not expressly prohibited by the RFP. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ ____ at 6; Dynamic Isolation Sys., Inc., B-247047, Apr. 28, 1992, 92-1 CPD ¶ 399 at 7 n.7. Here, not only did the RFP not prohibit considering the experience/past performance of the individual joint venture partners in the evaluation, as noted above, it specifically encouraged (RFP at 3-4) offerors to provide such information.

MVM also complains that its experience as the incumbent contractor should have been rated outstanding (and superior to BNCI/AKAL's experience), instead of good, and that the agency unreasonably upgraded the ratings for BNCI/AKAL's experience from acceptable to good after discussions, even though BNCI/AKAL did not identify in its revised proposals any additional experience beyond that identified in its initial proposals. The record shows that both offerors' experience was initially rated only acceptable because, although they both had significant security services experience, their detention experience was limited.

³ The BNCI/AKAL joint venture agreement states that the venture was formed for the "proposal, negotiation and performance" of the two INS unarmed security guard contracts. See Agency Reports, Joint Venture Agreement.

The record shows that BNCI/AKAL's rating was upgraded to good because, in response to discussions, the joint venture highlighted and described in more detail its relevant detention experience under several contracts that it had previously listed as relevant experience. See Agency Reports, Tab 8, BNCI/AKAL's Revised Proposal (Feb. 20, 2002); Tab 10, Source Selection Decision Documents, at 8. While MVM questions the relevance of this experience, based on our review, the additional detail in MVM's revised proposal reasonably supported BNCI/AKAL's good rating.

Moreover, the record shows that MVM had only recently begun performance of the interim contracts,⁴ and that prior to receiving these contracts, the agency found MVM did not possess the same level of experience with detention facilities as BNCI/AKAL. See Agency Reports, Tab 7, Initial Technical Evaluations for BNCI/AKAL's and MVM's Proposals; Tab 14, MVM's Initial Technical Proposal at 8-1-15 and BNCI/AKAL's Initial Technical Proposal at 7-14. The agency initially rated MVM's experience as acceptable, but upgraded this rating to good after considering that firm's limited but so far successful performance of the interim contracts. Agency Reports, Tab 10, Source Selection Decision Documents at 9. Given MVM's limited detention facility experience, the agency's judgment not to rate MVM's experience as outstanding was reasonable. MVM's challenge to the evaluation here amounts to nothing more than a disagreement with the way the agency evaluated its proposals, which is not a basis to overturn the agency's evaluation.⁵

With regard to financial condition and capability, MVM argues that the agency was unjustified in assigning outstanding ratings to BNCI/AKAL because the joint venture is a new entity and is allegedly thinly capitalized, with only \$1000 in working capital. MVM also argues that the line of credit identified in BNCI/AKAL's proposal was on behalf of AKAL Security, not the joint venture, and was due to mature in June 2001, and that the financial statements reveal a "clear dearth of available cash for financing the contract." MVM argues that the agency simply accepted, at face value, BNCI/AKAL's statements that it had a wealth of financial resources.

The record shows that BNCI/AKAL's proposals contained the required financial information regarding both individual joint venturers. Agency Report, Tab 14, BNCI/AKAL Proposal § C. Contrary to MVM's contentions, the separate qualifications and financial capability of each of the legal entities in a joint venture

⁴ MVM recently assumed performance of these contracts because of the default of the previous contractor. Protests at 2.

⁵ MVM similarly asserts that its performance as the interim contractor should have resulted in its receiving outstanding ratings under the personnel, quality control plan, and training factors. However, MVM's experience as the incumbent did not have to be considered in rating these factors. Modern Techs. Corp. et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 7.

properly can be considered in evaluating the qualifications of the joint venture. See Beneco Enters., Inc., B-239543.3, June 7, 1991, 91-1 CPD ¶ 545 at 6-7. Our review confirms that the agency considered, and could reasonably conclude from, the information submitted in BNCI/AKAL's proposal that the joint venture could complete the requirements of the contracts. See Agency Reports Tab 8, Financial Condition Spreadsheet.

With regard to MVM's specific contentions under this factor, BNCI/AKAL's proposal contained a financial commitment letter from a bank to AKAL which the record shows could be applied to this contract. Although this letter indicated that AKAL's current line of credit would "mature" on June 30, 2001, it also stated that "[s]hould the [INS] award a contract to AKAL [the bank] will, if the present commitment is insufficient to cover needs created by a new contract . . . consider additional commitment amounts." Agency Report, Tab 14, BNCI/AKAL's Proposal, app., Bank's Letter of Commitment. Further, the proposal included the financial statements of both joint venture partners, which reflected a considerable combined net worth and resources. We find no reason that the agency could not accept this information at face value in considering the joint venture's financial capability. Thus, the agency could reasonably find that the thin capitalization of the joint venture itself was not a concern and rate BNCI/AKAL's proposal outstanding under this factor.

MVM also protests that the agency's price evaluation of BNCI/AKAL's proposals was inadequate because the agency did not evaluate the documentation supporting BNCI/AKAL's proposed prices. Where, as here, a fixed-price contract is anticipated, the government may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices received in response to the solicitation; adequate price competition can establish price reasonableness. See FAR § 15.404-1(b)(2)(i).

Here, the record reflects that the agency determined that BNCI/AKAL's prices, which were only slightly lower than the protester's prices, were fair and reasonable based upon the level of competition received in response to the RFPs and a comparison of the competitive range prices. See Agency Reports, Tab 9, Price Reasonableness Determination. While the INS did obtain certain supporting pricing information from the offerors, the RFP did not commit the agency to performing a detailed analysis of this information for purposes of determining price reasonableness (or for any other purpose). The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion; we find no legal requirement here for the agency to have done a more in-depth analysis than was undertaken here. See Redcon, Inc., B-285828, B-285828.2, Oct. 11, 2000, 2000 CPD ¶ 188 at 9-10.

Finally, MVM protests that the source selection decision was improper because the INS made the awards to BNCI/AKAL solely on the basis of its low prices. Since MVM's and BNCI/AKAL's proposals were reasonably rated equally under the technical evaluation factors, the agency properly considered BNCI/AKAL's lower prices to be the determining factor.

The protests are denied.

Anthony H. Gamboa
General Counsel